Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of Application of)	
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JEKS	EY CITY PO	JLIC	E DEPA	KIMENI)	
)	
To	Operate	a	Public	Safety	Radio)	File No. 0000472841
Comr	nunications	Syst	tem in	Frequency	Band)	
470-4	80 MHz in J	ersey	City, No	ew Jersey)	

ORDER

Adopted: April 10, 2003 Released: April 11, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us an application and a waiver request filed by the Jersey City Police Department, Jersey City, New Jersey, for authority to operate a public safety radio system on ten UHF frequencies¹ in the New York Metropolitan area.² The applicant ("Jersey City" or "the City")³ seeks a waiver, pursuant to Section 337(c) of the Communications Act, as amended (the Act)⁴, of Sections 22.501, 22.621 and 90.303 of the Commission's Rules,⁵ to use currently unassigned frequencies allotted for non-public safety use.⁶ For the reasons stated herein, we grant Jersey City's waiver request.

1

¹ Frequencies in the 300 MHz to 3 GHz range are Ultra High Frequencies (UHF) but land mobile frequencies in the 450-512 MHz range are sometimes known as the land mobile "UHF band." In this *Order*, references to UHF mean 450-512 MHz. *See, e.g.* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, WT Docket No. 99-87, *Notice of Proposed Rule Making* 14 FCC Rcd 5206, 5215 ¶¶ 11-12 (1999).

² See FCC File No. 0000472841, Jersey City Police Department (filed May 24, 2001) (Request), as amended on May 16, 2002 (May 2002 Amendment), August 21, 2002 (Aug. 2002 Amendment), September 6, 2002 (Sept. 2002 Clarification), and January 31, 2003 (Jan. 2003 Amendment). Jersey City also filed additional information on November 4, 2002, January 21, 2003, and March 31, 2003.

³ The City of Jersey City, New Jersey, states that it submitted the above-captioned application and waiver request "through its Police Department." *See* Request at 1. Herein, for convenience only, we refer to the applicant as "Jersey City" or "the City." We clarify that the Jersey City Police Department is the applicant of record.

⁴ 47 U.S.C. § 337(c). Alternatively, Jersey City seeks a waiver pursuant to Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925. *See* Request at 1.

⁵ 47 C.F.R. §§ 22.501, 22.621, and 90.303. Jersey City also requested waiver of any other Commission rules that would prevent the grant of its application. *See* Request at 1.

⁶ Request at 1.

II. BACKGROUND

- 2. Jersey City, which is located on the west bank of the Hudson River and has a growing population of 250,000, is at the crossroads of major transportation systems that serve over 600,000 commuters daily.⁷ In addition to the New Jersey terminus of the Holland Tunnel, a major roadway for automobile traffic between New Jersey and New York City, these transportation systems include highway and ferry facilities, and three train stations operated by the Port Authority of New York and New Jersey Trans-Hudson.⁸ Jersey City is also the center of the new Hudson-Bergen Light Rail system operated by New Jersey Transit.⁹
- 3. Jersey City states that its public safety radio communications system is almost twenty-five years old and that during its existence and use the City's population and commerce have grown significantly. Jersey City reports that these demographic changes have increased the demand for public safety services, placing a substantial strain on its aging radio system. Moreover, Jersey City contends that communications carried on its public safety radio system are adversely affected because the frequencies utilized are shared with public safety entities from other jurisdictions in New Jersey, including Newark (New Jersey's largest city), and in the New York metropolitan area. Specifically, the Jersey City Police Department operates a six-channel pair UHF system that shares all channels with other jurisdictions; the Jersey City Fire and Emergency Services Department operates a three-channel pair UHF system that is also plagued by pervasive sharing of the authorized channels. In this connection, Jersey City contends that excessive channel loading and dead spots present major and intractable operational problems to both the police and fire agencies. Jersey City proposes to address these problems by replacing its current system with a new, trunked 12.5 kHz bandwidth system that would use Part 90 Public Safety Pool frequencies currently authorized to the City along with the ten frequencies currently designated for non-public safety use requested in the above-captioned application.

⁷ *Id.* at 2.

⁸ *Id.* at 2.

⁹ *Id*

¹⁰ *Id.* at 2-3.

¹¹ *Id*.

¹² *Id.* at 3-4.

¹³ *Id.* at 3-4. The Jersey City Police Department has 861 Uniformed Officers and a support staff of 126 personnel. *Id.* at 3.

¹⁴ *Id.* at 4. The Jersey City Department of Fire and Emergency Services has 579 full time Uniformed Officers, and a support staff of forty-one personnel. *Id.* at 3. One of its three UHF channel pairs is a 12.5 kHz "offset" that it uses primarily as a fire ground channel. *Id.* at 4.

¹⁵ *Id.* at 4-5. Jersey City states that these deficiencies have resulted in a number of critical safety of life situations, *e.g.*, repeated requests for backup went unheard at a large street fight with firearms present and at a large apartment complex (for the apprehension and arrest of an individual committing an assault and assistance for the crime victim). In another situation, a narcotics unit in pursuit of a suspect was unable to communicate description or location information to other units in the area. *Id.* at 4-5.

¹⁶ The Pubic Safety Radio Pool consists of frequencies available to, *inter alia*, governmental entities and entities involved in medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief (continued....)

- 4. On June 14, 2001, the Wireless Telecommunications Bureau (Bureau) placed Jersey City's May 2001 application and waiver request on public notice. Following the comment period, Bureau staff conducted an engineering analysis and informally raised engineering issues relative to the City's proposal and the associated interference potential to existing Part 22 licensees. Issues also arose relative to the then-pending application and waiver request, pursuant to Section 337(c) of the Act, of the Port Authority of New York and New Jersey (Port Authority). After conducting its own analysis of the Part 22 engineering issues, and reaching an agreement under which the Port Authority requested dismissal of its application, Jersey City amended its application in May 2002 to request authority to operate on eight Part 22 frequencies. The May 2002 Amendment also clarified that Jersey City proposes to construct a multi-disciplinary communications system as opposed to a communications system that only its Police Department would use. The May 2002 Amendment also reported the commitment of substantial Federal Government funding for the design and construction of Jersey City's new public safety radio system. Bureau staff analyzed the amended application, identified engineering issues related to potential interference and notified Jersey City.
- 5. In August 2002, the City amended the above-captioned application to seek authorization to operate on ten Part 22 frequencies, paired as follows: 470.0500 MHz/473.1750 MHz, 470.2500 MHz/473.2000 MHz, 470.2750 MHz/473.2750 MHz, 476.2750 MHz/479.2750 MHz, and 476.0875 MHz/-

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organizations, school buses, beach patrols, establishments in isolated places, communications stand-by facilities
and emergency repair or public communications facilities. See 47 C.F.R. § 90.15. The specific frequencies in the
pool are set forth at 47 C.F.R. § 90.20(c)(3).

¹⁷ *Id.* at 2. As first filed in May 2001, the Request sought authority for eighteen Part 22 frequencies, paired as follows: 470.0250 MHz/473.1500 MHz, 470.0500 MHz/473.1750 MHz, 470.1250 MHz/473.1250 MHz, 470.2500 MHz/473.2500 MHz, 470.2750 MHz/473.2750 MHz, 476.0250 MHz/479.0250 MHz, 476.0750 MHz/479.0750 MHz, 476.2500 MHz/479.2500 MHz and 476.2750 MHz/479.2750 MHz.

¹⁸ See Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by Jersey City, New Jersey, Police Department to Obtain a Public Safety License for Eighteen UHF Paging Control Frequencies, *Public Notice*, 16 FCC Rcd 12,472 (WTB PSPWD 2001). The Commission received comments from the Borough of Ramsey, Bergen County (New Jersey) Police Department; the City of Bayonne (New Jersey) Police Department; the City of Jersey City (New Jersey) Office of Emergency Management; and the Spring Valley (New York) Police Department. All four commenters urged the Commission to grant Jersey City's request. There were no comments submitted in opposition to Jersey City's application and waiver request.

¹⁹ See FCC File No. 0000406695, filed Mar. 26, 2001.

²⁰ *Id.* The Port Authority's request for dismissal was granted on May 16, 2002. *See* Letter from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division (PSPWD), Wireless Telecommunications Bureau (WTB), FCC, to Ramsey L. Woodworth, Esq., dated May 16, 2002.

²¹ May 2002 Amendment at 4. In the May 2002 Amendment, Jersey City sought authorization to operate on eight Part 22 frequencies, paired as follows: 470.0500 MHz/473.1750 MHz, 470.2500 MHz/473.2500 MHz, 470.2750 MHz/473.2750 MHz and 476.2750 MHz/479.2750 MHz. In addition, Jersey City noted that the conflict with the Port Authority was resolved. *Id.* at 2-3.

²² *Id.* at 4-5.

²³ *Id.* at 4 citing Fiscal Year 2002 Appropriation Legislation for the Department of Commerce, Justice, State, the Judiciary and related Agencies, Pub. Law. No. 107-77 (Nov. 28, 2001), and Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorism Attacks on the United States Act, Pub Law No. 107-117 (Jan. 10, 2002). *See generally* "Jersey City Gets \$12.5 Million to Upgrade Emergency Radios," Associated Press Newswires, Jan. 31, 2002.

479.2250 MHz.²⁴ In September 2002, Jersey City filed clarifications to its request.²⁵ On October 8, 2002, the Bureau placed Jersey City's amended application and waiver request on public notice.²⁶ The Public Safety Wireless Network filed comments in support of Jersey City's request and no comments were filed opposing Jersey City's request.²⁷ Jersey City filed reply comments on October 29, 2002.²⁸

6. As the frequencies in question are not designated for public safety use, Jersey City requires a waiver of Sections 22.7, 22.501, 22.621, 22.651, and 90.311 of the Commission's Rules. ²⁹ Jersey City seeks such a waiver, pursuant to Section 337(c) of the Act and Section 1.925 of the Commission's Rules, to use the frequencies. ³⁰ In connection with the instant request, Jersey City has represented that, upon the implementation of its new system, it would surrender for cancellation its existing authorizations to operate on 039.0600 MHz, 048.2000 MHz, 154.6800 MHz, 155.0250 MHz, 155.0850 MHz, and 155.4750 MHz, provided that these channels are not required for interoperability with state or adjoining municipalities. ³¹

III. DISCUSSION

- 7. Section 337(c) of the Act provides that the Commission must waive any rules necessary to authorize entities providing public safety services to operate on unassigned non-public safety spectrum, if the Commission makes five specific findings:
 - public safety spectrum is not immediately available;
 - the proposed use will not cause harmful interference to protected spectrum users;

²⁵ See Clarifying Information to Amended Application and Waiver Request, filed Sep. 6, 2002.

²⁴ Aug. 2002 Amendment at 5.

²⁶ See Wireless Telecommunications Bureau Seeks Comment on Jersey City, New Jersey's Amended Request For Waiver to Operate a Public Safety Radio System Utilizing Ten UHF Paging Control Frequencies, *Public Notice*, DA 02-2567, rel. Oct. 8, 2002 (WTB PSPWD).

²⁷ See Comments of Public Safety Wireless Network, filed October 28, 2002. On October 1, 2002, the City of Bayonne, New Jersey (Bayonne) Police Department filed a letter with the Commission concurring with Jersey City's request on the condition that Jersey City agrees to configure its radio system to prevent interference to the radio system that Bayonne proposes in a pending application and request for waiver under Section 337 of the Act (FCC File No. 0000941858, filed June 26, 2002). See Letter from Mark Smith, Police Director, to FCC, Washington, D.C., dated Sep. 5, 2002.

²⁸ See Jersey City Reply Comments, filed Oct. 29, 2002 (Reply Comment).

²⁹ 47 C.F.R. §§ 22.7, 22.501, 22.621, 22.651, 90.311. Section 22.7 limits eligibility to operate on Part 22 frequencies to common (*i.e.*, commercial) carriers. Section 22.501 defines the scope of the licensing and operation of the public paging and radiotelephone service. Section 22.621 requires the use of point-to-multipoint operation on five of the requested frequencies. Section 22.651 requires the use of trunked mobile operations on the other five frequencies requested. *But see* 47 C.F.R. § 22.655 (FCC is redesignating public mobile channels in the 450-470 MHz range from trunked mobile operation to point-to-multipoint operation as the demand for trunked mobile service decreases). Section 90.311 excludes frequencies in the 470-512 MHz range from assignment to private land mobile radio applicants if the frequencies are allocated for services under Part 22.

³⁰ See 47 U.S.C. § 337(c), 47 C.F.R. § 1.925.

³¹ See Letter from John E. Logan, Esq. to Peter J. Daronco, Deputy Chief, Policy and Rules Branch, PSWD, WTB, dated Jan. 31, 2003, at 3.

- public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area;
- the unassigned frequencies have been allocated for non-public safety use for more than two years; and
- grant of the application is consistent with the public interest.³²
- 8. Public safety services are services whose principal purpose is to protect the safety of life, health, or property, provided by governmental entities whose primary mission is the provision of such services, or by non-governmental entities authorized by such a governmental entity, and that are not made commercially available to the public.³³ Based on the record before us, we find that Jersey City is an entity providing public safety services.³⁴ We therefore move to examining whether Jersey City meets the statutory requirements supporting a waiver under Section 337(c) of the Act.
- 9. *Immediate availability of public safety spectrum.* Jersey City contends no public safety spectrum is immediately available that would support its proposed radio system.³⁵ In support of its contention, Jersey City submitted a spectrum analysis report compiled by an engineering consulting firm.³⁶ This report made the following observations:
 - The 150-160 MHz band has no available frequencies that could be granted without violating the adjacent channel protection requirements that govern trunked systems such as the one proposed by Jersey City (see 47 C.F.R. § 90.187);
 - The Part 90 450-466 MHz, 470-473 MHz and 476-479 MHz bands contain 6.25 kHz bandwidth channels, but these frequencies are not available because no manufacturer provides equipment for this narrow bandwidth. The report further states these channels cannot be coordinated due to the close proximity of existing co- or adjacent channel users;
 - The 806-821 MHz, 821-824 MHz, 851-866 MHz bands, and 866-869 MHz bands do not have unassigned channels;
 - The 764-776 and 794-806 MHz bands, while designated for public safety use, are not immediately available for Jersey City because of existing television broadcast stations.³⁷

 36 See generally Request, Appendix A and May 2002 Amendment, Appendix A.

³² See 47 U.S.C. § 337(c).

³³ See 47 U.S.C. § 337(f).

 $^{^{34}}$ See Nassau County Police Department, Memorandum Opinion and Order, 17 FCC Rcd 14252, 14258 \P 11 (2002).

³⁵ Request at 8.

³⁷ Request, Appendix A at 3-4, May 2002 Amendment, Appendix A at 3-4.

The spectrum analysis report is supported by a FCC-certified public safety frequency coordinator (Association of Public-Safety Communications Officials International, Inc.)³⁸ and Jersey City's Regional Planning Coordinator (Regional Planning Committee-Region 8).³⁹ Based on the record before us, we concur with Jersey City's contentions and find that no other public safety spectrum is immediately available to satisfy the requested public safety service use.

10. Technical feasibility of requested use without causing harmful interference. Jersey City's proposed frequencies are in the 470-480 MHz band, which is allocated on a geographically-shared basis with television broadcast stations. In the New York metropolitan area, the Commission regulates the ten requested frequencies under Part 22 of its Rules. Specifically, the Commission has designated five of the frequencies requested herein for point-to-multipoint transmitters used to support transmitters that provide public mobile service, e.g., paging control. The other five frequencies requested herein are designated for trunked mobile operations, although the Commission is redesignating channels in this range to point-to-multipoint operation as demand decreases for trunked mobile operations. We also note the certification of a FCC-certified frequency coordinator of Public Safety Pool frequencies that Jersey City's proposed radio system will not interfere with other licensed public safety systems. Hassed on the record before us, we believe the operational and technical parameters of Jersey City's proposed system meet the Commission's requirements for interference protection to incumbent public safety licensees—provided that the antenna at location 1 (50 Baldwin Avenue) utilizes a minimum of three degrees of downtilt. Moreover, we note that the potential for interference to adjacent channel users licensed under Part 22 is further diminished because Jersey City will use 12.5 kHz bandwidth equipment

³⁸ Request, Attachment C.

³⁹ Request, Attachment B.

⁴⁰ Frequencies in the 470-512 MHz band, normally assigned to UHF Television channels 14 through 20, were made available for land mobile radio use in 11 cities in the early 1970's in the "UHF-TV Sharing" proceeding. *See* Land Mobile Use of TV Channels 14 through 20, Docket No. 18261, *Report and Order*, 23 FCC 2d 325 (1970).

⁴¹ 47 C.F.R. § 22.1 et. seg.

⁴² See 47 C.F.R. §§ 22.621, 22.627. As noted, the captioned application initially requested eighteen Part 22 frequencies, see note 17, supra, and was subsequently amended to request eight Part 22 frequencies, see note 21, supra. The captioned application now before us, as further amended, requests ten Part 22 frequencies.

⁴³ See 47 C.F.R. §§ 22.621, 22.651, 22.655.

⁴⁴ See Letter from Sergeant Anthony Melia, New Jersey Frequency Advisor, APCO International, to D'wana R. Terry, Chief, PSPWD, WTB, dated Mar. 11, 2003 (APCO Letter). "I utilized our standard coordinating approach by applying TIA – 8.8 methodology . . . [and] I can certify that there should be no harmful interference to either the Borough of Ft. Lee or Somerset County . . . if . . . Antenna 1 at location 1 utilizes a minimum of 3 degrees downtilt." *Id.* at 1.

⁴⁵ See id. We also note that the Borough of Fort Lee, New Jersey (For Lee), which is licensed under Station WPWS499 to operate a public safety radio system using Part 22 frequencies, has assured the Commission that the footprint of its radio system will be confined to the geographic jurisdiction of Fort Lee and its immediate vicinity. See Letter from Donald O. Sauvageot, Police/Fire System Superintendent, Communications Department, Borough of Fort Lee, to Secretary, FCC, dated Feb. 6, 2003.

on frequencies designated under Part 22 for 20 kHz bandwidth.⁴⁶ We therefore find that Jersey City's proposed system is technically feasible and will not cause harmful interference to protected spectrum users.

- 11. Public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area. As Jersey City notes, the frequencies it proposes to use in its public safety communications system are within a frequency band where public safety land mobile radio operations are authorized, and more importantly are currently being used by other public safety agencies in the New York metropolitan area (e.g., the New York City Police Department, the Nassau County Police Department and the Bergen County Police Department). We therefore find that the use of the unassigned frequency pairs for the provision of the proposed public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made. Moreover, because other agencies in the New York Metropolitan Area are using these frequencies, we believe that granting the request will promote interoperability capability among the public safety community in this area.
- 12. The frequencies have been allocated for non-public safety use for more than two years. The Commission allocated these frequencies for non-public safety use in 1994.⁴⁸ Thus, these frequencies have been allocated for their present use for more than two years.
- 13. Granting this application is consistent with the public interest. Based upon the record in this proceeding, we believe Jersey City's filings demonstrate that access to additional spectrum is needed in order to promote effective public safety communications. As described by Jersey City, public safety communications in the Jersey City area are limited because of the lack of available frequencies and this limited communications capability has potentially placed the safety of public safety personnel at risk. We believe that it would further the public interest by affording Jersey City's public safety community the necessary spectrum to allow it to safely protect the lives and property in its care. Indeed, Section 1 of the Act defines one of the Commission's over-arching purposes as "promoting safety of life and property through the use of...radio communication." We also find that Jersey City's commitment to surrender its existing, shared VHF authorizations or designate same for interoperability serves the public interest by easing the congestion on these shared channels in the New York City metropolitan area. Additionally, we find it significant that granting the instant request will promote interoperability capability among the public safety community in the New York metropolitan area.

IV. CONCLUSION

14. We find that Jersey City's Request satisfies the criteria set forth under Section 337(c) of the Act to obtain a grant of its application to operate a public safety communications system on frequencies in

⁴⁶ See 47 C.F.R. § 22.621. We also note that Jersey City has entered into a cooperative agreement with Metrocall, a potentially affected FCC-licensee, in which Jersey City agrees to protect Metrocall's operations on 473.2125 MHz. See Letter from Kenneth Goldstein, Senior Vice-President, Engineering Metrocall to James Carter, Police Director, Jersey City Police Department, dated Oct. 3, 2002.

⁴⁷ Request at 14.

⁴⁸ See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket 92-115, Report and Order, 9 FCC Rcd 6513 (1994).

⁴⁹ See Request at 4-5.

⁵⁰ 47 U.S.C. § 151.

the 470-480 MHz band. We therefore grant Jersey City's Request for Waiver.⁵¹ In this connection, we note that trunking of Part 90 frequencies is governed by Section 90.187 of the Commission's Rules⁵² and thus not addressed in the instant Order. We remind Jersey City that it must separately apply for authority before trunking its currently authorized Part 90 frequencies in the bands between 150 MHz and 512 MHz.

V. ORDERING CLAUSES

- 15. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 337(c), the request for waiver associated with the captioned application filed by the Jersey City Police Department on May 25, 2001, as amended, to use frequencies 470.0500 MHz/473.1750 MHz, 470.2500 MHz/473.2000 MHz, 470.2750 MHz/473.2750 MHz, 476.2750 MHz/479.2250 MHz, for public safety services as requested in the captioned application **IS GRANTED.**
- 16. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 337(c), that the Licensing and Technical Analysis Branch SHALL PROCESS File No. 0000472841 consistent with this Order and the Commission's Rules. In the event that the above-captioned application is granted, the authorization shall include the following special condition: Antenna No. 1 at Location No. 1 shall utilize a minimum of three degrees of downtilt."
- 17. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0131, 0331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry Chief, Public Safety and Private Wireless Division Wireless Telecommunications Bureau

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⁵¹ In view of the conclusion that a grant of a waiver for Jersey City is warranted under Section 337(c) of the Act, we need not reach the question of whether Jersey City's waiver request should be granted under Section 1.925(b)(3) of the Commission's Rules.

⁵² 47 C.F.R. § 90.187.

⁵³ See FCC File No. 0000472841, Form 601 Schedule D (Location No. 1 street address is 50 Baldwin Avenue, Jersey City, NJ, and the coordinates are 40-43-22.0 (N), 74-3-51.0 (W)), and Schedule J (Antenna Information).